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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,436

09/30/2003

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15037US02

5627

23446 7590 09/29/2009
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ART UNIT

PAPER NUMBER

2427

MAIL DATE

DELIVERY MODE

09/29/2009

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,436
Filing Date: September 30, 2003
Appellant(s): KARAOGUZ ET AL.

Joseph M. Butscher
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08 July 2009 appealing from the Office action mailed 15 June 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0112239	GOLDMAN	8-2002
5,600,364	HENDRICKS et al.	2-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman (US 2002/0112239) in view of Hendricks (US 5,600,364).

Regarding claim 1, Goldman teaches a method of communicating activity information to support user and user base profiling and consumption feedback in a communication network, the method comprising:

establishing at a first location, from a second location, at least one parameter related to monitoring media consumption activity of a user at a first location, i.e. the

Art Unit: 2427

requesting of specific viewer behavior information 98, containing type & volume of data pertaining to media consumption activity, from a user at a 1st location (home entertainment system 90) by a clearinghouse system 100, at a 2nd location (Figs. 1-3; paragraph [0037]);

receiving, at the first location, a media request from the user, the requested media having an associated set of pre-defined characteristics, i.e. the tracking of viewer behavior information related to user at 1st location, 90, making a request to tune or display a television program, whereby the identification of the requested media is made possible by information contained within an EPG (paragraph [0032-0035]);

determining, at the first location, whether the associated set of pre-defined characteristics matches the at least one parameter, i.e. a home entertainment system, 90, matching specific data requested by the clearinghouse system 100 with that of the data of the program being tracked (paragraphs [0036-0037]), for example: coupling IDs of programs viewed from an EPG to an occurrence of the program being viewed based on data remotely requested from the clearinghouse, then storing the IDs as an instance of viewer behavior information (Para. 36-37);

sending notification of the media request to a second location, via a communication network, if the determining results in a match, i.e. sending requested data, which may include a channel ID, program ID, etc, back to the clearinghouse (Figure 2; paragraphs [0037] & [0043]).

Art Unit: 2427

Goldman does not explicitly teach refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match.

Hendricks teaches storing user media requests at the set-top box (Col. 26, lines 26-40);

a network controller periodically polls the set-top box for the stored media requests, wherein the polling request message can include information such as a set-top box identifier, subscriber region designation, program name, program length, menu code, description, etc (Tables A, B, C; Col. 26, lines 11-40);

if the user has accessed programs after the previous polling cycle, then the number of programs accessed and their associated event identification numbers are sent in a response back to the network controller (Col. 28, lines 3-15);

if the user has not accessed programs after the previous polling cycle, then the set-top box sends a response that denotes zero programs accessed (Col. 28, lines 3-15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Goldman to include refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match, by incorporating the polling techniques taught by Hendricks with the information requesting technique of Goldman, for the purpose of providing the information requester with a response to every information request thereby making the entire communication system more efficient.

With respect to Claim 2, the claimed “wherein the first location is associated with one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN)” is met by Goldman that teaches Claim 1 and the use of an addressable set-top box, within home entertainment system 90, that sends select viewer behavior information using the Internet (paragraph [0010] & [0040]). The claimed “Internet protocol (IP) address” is not explicitly taught by the Goldman reference. The Examiner furthermore notes that the use of IP addresses is necessary to selectively address and direct data among set-top boxes exchanging data on an Internet network.

With respect to Claim 3, the claimed “wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure” is met by Goldman that teaches Claim 1 in which the communication network 110 can include a cable, optical, terrestrial antenna system, satellite system etc. (Fig1; paragraph [0029]).

With respect to Claim 4, the claimed “wherein the communication network is the Internet” is met by Goldman that teaches the use of an Internet connection by a user at

Art Unit: 2427

the 1st location, home entertainment system 90, in sending pertinent viewer behavior information 98 (Fig.1; paragraphs [0040] & [0060]).

With respect to Claim 5, the claimed “wherein the media comprises one or more of audio, a still image, video, real time video, and data” is met by Goldman that teaches video data corresponding to broadcast 88 being delivered to a 1st user at home entertainment system 90 (Fig.1; paragraphs [0029] & [0035]).

With respect to Claim 6, the claimed “wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data” is met by Goldman that teaches the use of a display device 92 at a 1st location (home entertainment system 90) for the displaying of broadcast programming, such as video data (Fig. 1 & 2; paragraphs [0022], [0027], [0031], & [0035]).

With respect to Claim 7, the claimed “wherein the at least one parameter comprises a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, a language, information identifying the user, information indicating whether the user may be contacted, and information indicating how information related to the media request may be used” is met by Goldman that teaches a central clearinghouse 100 indicating specific viewer behavior information that it desired to be tracked, such as: channel ID, subscriber ID, program ID & title, city & state of channel,

Art Unit: 2427

and the current date & time (Goldman-paragraph [0037]; Hendricks-Col. 26, lines 26-61).

With respect to Claim 8, the claimed “wherein the associated set of pre-defined characteristics comprises one or more of a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, and/or a language” is met by Goldman that teaches the use of an EPG in making available data for viewer behavior information 98, the data pertaining to: provider of broadcast, type of broadcast, date & time of broadcast, origination of broadcast, manner in which broadcast is being supplied, title of program, episode, director of program, actors, program ratings, etc. (Goldman-paragraph [0034]; Hendricks-Col. 28, lines 3-15).

Claim 9 is met as previously discussed with respect to Claim 1. Goldman in view of Hendricks further teaches creating at least one record of the media request, at the second location; and sharing information derived from the at least one record with a third party, i.e. the use of a storage device 104 for the gathering of viewer behavior information 98 at the clearinghouse system 100, the creation of a viewer behavior information report 109, and the transmittal of 109 to a third party, signal source 80 (Goldman-Fig. 3; paragraphs [0043] & [0048]; Hendricks-Col. 29, line 54-Col. 30, line 49).

Claim 10 is met as previously discussed with respect to Claim 2.

Claim 11 is met as previously discussed with respect to Claim 3.

Claim 12 is met as previously discussed with respect to Claim 4.

Claim 13 is met as previously discussed with respect to Claim 5.

Claim 14 is met as previously discussed with respect to Claim 6.

Claim 15 is met as previously discussed with respect to Claim 7.

Claim 16 is met as previously discussed with respect to Claim 8.

With respect to Claim 17, the claimed “wherein the third party is at least one of a third party media provider, a third party service provider, and a third party sales provider” is met by Goldman that teaches the method of Claim 9 and the transmittal of a viewer behavior information report 109 to a third party service provider, signal source 80 (Fig.3; paragraph [0048]).

With respect to Claim 18, the claimed “wherein the sharing uses the communication network” is met by Goldman that teaches the method of Claim 9 and the sharing of viewer behavior information report 109 with signal source 80 via the communication network 110 (Fig.3; paragraph [0048]).

Claim 19 is met as previously discussed with respect to Claim 1. Goldman in view of Hendricks further teaches a 1st location, home entertainment system 90, which may

Art Unit: 2427

consist of a addressable set top box {storage device 96, processor 94} & a television {display device 92}, using an EPG for the selection of video data, and the transmittal of information related to media selected for media consumption {viewer behavior information 98- which may contain subscriber ID, channel ID, program ID and title, etc.}, via the internet, to server software {clearinghouse system 100}} which stores sent info {storage device 96} (Goldman-Figs.1-3; paragraphs [0027], [0033-0035], [0040-0042], & [0043]).

Furthermore, with respect to the claimed "the server software sending notification of a media request to a second location based on a determination as to whether a set of predefined characteristics associated with the requested media matches at least on parameter related to monitoring media consumption activity at the first location" is met by Goldman that teaches the transmittal of compiled viewer behavior reports to numerous 2nd locations, home entertainment systems 90a-d, based upon whether or not select viewer behavior information 98, from home entertainment systems matches those requested by the clearinghouse system 100 and Hendricks that teaches receiving a polling response that includes the set-top box identifier, subscriber address, and program access data (Goldman-Figs.2, 3; paragraphs [0037], [0043],[0045]; Hendricks-Col. 27, line 49-Col. 28, line 15).

Claim 20 is met as previously discussed with respect to Claim 5.

Claim 21 is met as previously discussed with respect to Claim 6.

Art Unit: 2427

Claim 22 is met as previously discussed with respect to Claim 2.

Claim 23 is met as previously discussed with respect to Claim 3.

Claim 24 is met as previously discussed with respect to Claim 1.

Claim 25 is met as previously discussed with respect to Claim 7.

With respect to Claim 26, the claimed “server software that shares, with a third party, information derived from the received data” is met by Goldman that teaches the system of Claim 19, and the transmittal of a viewer behavior information report 109, by clearinghouse system 100, to a third party service provider, signal source 80 (Fig.3; paragraph [0048]).

Claim 27 is met as previously discussed with respect to Claim 8.

Claim 28 is met as previously discussed with respect to claims 1 and 19.

Claim 29 is met as previously discussed with respect to Claim 5.

Claim 30 is met as previously discussed with respect to Claim 6.

Claim 31 is met as previously discussed with respect to Claim 2.

Claim 32 is met as previously discussed with respect to Claim 3.

Claim 33 is met as previously discussed with respect to Claim 1.

Claim 34 is met as previously discussed with respect to Claim 7.

With respect to Claim 35, the claimed "wherein the software shares, with a third party, information derived from the received data" is met by Goldman teaching the use of a storage device 104 for the gathering of viewer behavior information 98 at the clearinghouse system 100, the creation of a viewer behavior information report 109, and the transmittal of 109 to a third party, signal source 80 (Fig. 3; paragraphs [0043] & [0048]).

Claim 36 is met as previously discussed with respect to Claim 8.

With respect to Claim 37, the claimed "wherein the software comprises server software" is met by Goldman teaching the use of a clearinghouse system 100 in the compilation/creation a viewer behavior information report (Fig.3; paragraphs [0043]-[0045]).

(10) Response to Argument

I. The Proposed Combination of Goldman and Hendricks Does Not Render Claims 1-8 Unpatentable

A. Goldman does not teach Determining, at the First Location, Whether The Associated Set of Pre-Defined characteristics Matches at Least One Parameter

In response to appellant's arguments that the given references do not teach "determining, at the first...least one parameter", Page 10, Sec. A, the examiner respectfully disagrees. Goldman teaches a first location, i.e. home entertainment system, tracks and records viewer behavior information indicating what and how a television broadcast was utilized. The viewer behavior information is correlated with data indicating the channel and television program, dates and times of the programs, as well as various other information provided (Para. 31-36). An operator at a central clearinghouse is able to remotely request certain types of information to be transmitted to the clearinghouse to be stored as an instance of viewer behavior information (Para. 28, 37). Hendricks teaches polling a set-top terminal for data indicating programs that were accessed during the time between polls. When the set-top terminal receives a polling request from a network controller, any accessed program data is transmitted to the controller.

Appellant indicates in various places in the brief that Goldman does not teach the viewer behavior information matches anything. As one can clearly see above, the remotely requested data fields are "matched" to the fields containing the data for the recently viewed television programs so that only the requested data is transmitted to the

Art Unit: 2427

clearinghouse. In fact, the data has to match in order for it to be sent to the clearinghouse. For example, if the operator wishes to receive a channel ID for a media request, he/she would remotely request any channel ID from the home entertainment system. Thus, data indicated as a channel ID at the home entertainment system is transmitted to the clearinghouse as a notification of requested media.

In response to appellant's arguments that the given references do not teach "sending notification of...in a match", Page 10, Sec. A, lines 10-11, the examiner respectfully disagrees. As indicated above, Goldman teaches the remotely requested data fields are "matched" to the fields containing the data for the recently viewed television programs so that only the requested data is transmitted to the clearinghouse. Therefore, notification of a media request is transmitted to the clearinghouse whenever the requested viewer behavior data matches the data generated at the home entertainment center. If the generated data does not match or there is no data, then no indication of a media request will be transmitted to the clearinghouse. Therefore, the combination of the cited references teaches the aforementioned limitations.

B. The Office Action Has Not Shown That Any of The Cited References Teach "Refraining"

In response to appellant's arguments that the given references do not teach "refraining from sending...in a match", Page 17, Sec. B, the examiner respectfully disagrees. The claims recite that 'a notification of the media request' is refrained from

Art Unit: 2427

being sent but it does not limit what 'a notification' constitutes. Additionally, the specification of the instant application describes a process wherein it states "if the characteristics of the selected media channel and user-specific information do not match (block 203), no user activity information will be communicated," (Spec-Para. 47). In fact, the only mention of refraining from sending a notification of a media request is located in the summary of the specification and merely uses the same language as the claim limitation and does not provide any detail as to the actual refraining process (Spec-Para. 10). Goldman teaches matching data requested from the clearinghouse with data associated with a media request and sending the matched data to the clearinghouse while refraining from sending data that does not match (See Above Arguments). A user is also able to block notifications of media requests from being sent (Para. 58). Hendricks teaches storing user media requests at the set-top box (Col. 26, lines 26-40); a network controller periodically polls the set-top box for the stored media requests, wherein the polling request message can include information such as a set-top box identifier, subscriber region designation, program name, program length, menu code, description, etc (Tables A, B, C; Col. 26, lines 11-40); if the user has accessed programs after the previous polling cycle, then the number of programs accessed and their associated event identification numbers are sent in a response back to the network controller (Col. 28, lines 3-15); and if the user has not accessed programs after the previous polling cycle, then the set-top box sends a response that denotes zero programs accessed (Col. 28, lines 3-15).

For example, a user requests a television program and that media request is stored at the set-top box. When a polling request is received, the media request data is transmitted to the network controller if it matches the data in the polling request. If there have been zero programs accessed since the last polling cycle or if the user is still viewing a program that was accessed during the previous cycle, then no media request data will be stored at the set-top box. When the polling request is received, the set-top box responds with the programs accessed block denoting zero programs accessed. The set-top box will refrain from sending a notification of the media request because there will not be any data to match or send. It should be noted that while the set-top box responds to the polling request, this is not a notification of a media request since there were no media requests or media request data to be notified about in the first place to be sent with the response. Clearly, Hendricks refrains from sending 'a notification' indicating that a user watched a requested program that was not actually watched. The claim and the specification do not state that the receiver refrains from sending any notification or communication to the server. They state that the receiver refrains "from sending a notification of the media request" and "no user activity information will be communicated", which are entirely different. Therefore, in light of the specification and the claim language, sending an acknowledgement notification with data indicating zero programs accessed from the receiver to the server does not constitute sending a "notification of a media request" and is in fact equivalent to "refraining from sending a notification of a media request."

Art Unit: 2427

II. The Proposed Combinations of Goldman and Hendricks Does Not Render Claims 9-18 Unpatentable

No particular arguments are presented over and above those previously raised/addressed. Accordingly, the examiner respectfully disagrees that these claims should be found likewise patentable.

III. The Proposed Combinations of Goldman and Hendricks Does Not Render Claims 19-27 Unpatentable

No particular arguments are presented over and above those previously raised/addressed. Accordingly, the examiner respectfully disagrees that these claims should be found likewise patentable.

IV. The Proposed Combinations of Goldman and Hendricks Does Not Render Claims 28-37 Unpatentable

No particular arguments are presented over and above those previously raised/addressed. Accordingly, the examiner respectfully disagrees that these claims should be found likewise patentable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 2427

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jeremy Duffield/
Patent Examiner
Art Unit 2427

23 September 2009

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